

ASSEMBLY BILL

No. 1139

Introduced by Assembly Member Dymally

February 22, 2005

An act to add Chapter 13.5 (commencing with Section 7130) to Division 7 of Title 1 of the Government Code, relating to economic development.

LEGISLATIVE COUNSEL'S DIGEST

AB 1139, as introduced, Dymally. The Economic Development Incentives Act.

(1) Existing law provides for various programs for economic development within the state and for the reporting of state and local tax revenues.

This bill would enact the Economic Development Incentives Act to require the Department of Finance to submit an annual Unified Economic Development Budget to the Legislature no later than October 1 of each year to make publicly available information that presents all types of expenditures for economic development, including, but not limited to, uncollected state tax revenues, including any tax credit, tax abatement, tax exemption, or tax reduction, and all state-appropriated expenditures for economic development, including line item budgets for every state-funded entity concerned with economic development.

The bill would require each county assessor to submit an annual report to the department regarding any real property in the county's jurisdiction that has received a property tax abatement or reduction during the fiscal year and would require each county to also submit a report to the department that sets forth the total property tax revenue not paid to the county during the fiscal year as a result of all property

tax reductions and abatements in the county's jurisdiction. By imposing new duties on local public officials, the bill would create a state-mandated local program.

The bill would also require each granting body, as defined, together with an applicant for a development subsidy, to complete an application on a form prepared by the Business, Transportation and Housing Agency for each economic development project and to file an annual progress report with the agency for each project for which a development subsidy has been granted, no later than February 1 of each year, and a 2-year progress report to the department, as specified. The bill would specify requirements for granting an award and procedures for recapturing the development subsidy from a recipient corporation that fails to comply with these requirements.

The bill would authorize any person who paid personal income taxes to the state, as specified, to bring a civil action to compel enforcement of the act if a granting body fails to enforce any of its provisions. The bill would also require that all records prepared or maintained under the act are subject to the California Public Records Act.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 13.5 (commencing with Section 7130)
2 is added to Division 7 of Title 1 of the Government Code, to
3 read:

4
5 CHAPTER 13.5. THE ECONOMIC DEVELOPMENT INCENTIVES
6 ACT

7
8 7130. The Legislature finds and declares all of the following:

1 (a) Although the state and its local government units have
2 granted numerous economic development subsidies in the last 25
3 years, the real wage levels and health care coverage of working
4 families have declined.

5 (b) When workers receive low wages and poor benefits, those
6 jobs often impose hidden taxpayer costs upon its citizens, in the
7 form of Medicaid, food stamps, earned income tax credits, and
8 other forms of public assistance to the working poor and their
9 families.

10 (c) Citizen participation in economic development has been
11 impeded by a lack of readily accessible information regarding
12 expenditures and outcomes.

13 (d) Therefore, in order to improve the effectiveness of
14 expenditures for economic development and to ensure that they
15 achieve the goal of raising living standards for working families,
16 the Legislature finds it necessary to collect, analyze, and make
17 publicly available information regarding those expenditures and
18 to enact certain safeguards for their use.

19 7131. As used in this chapter, the following definitions apply:

20 (a) “Corporate parent” means any person, association,
21 corporation, joint venture, partnership, or other entity, that owns
22 or controls 50 percent or more of a recipient corporation.

23 (b) “Date of subsidy” means the date that a granting body
24 provides the initial monetary value of a development subsidy to a
25 recipient corporation. However, where the subsidy is for the
26 installation of new equipment, the date shall be the date the
27 corporation puts the equipment into service and where the
28 subsidy is for improvements to property, the date shall be the
29 date the improvements are finished, or the date the corporation
30 occupies the property, whichever is earlier.

31 (c) “Department” means the Department of Finance.

32 (d) “Development subsidy” means any expenditure of public
33 funds with a value of at least twenty-five thousand dollars
34 (\$25,000) for the purpose of stimulating economic development
35 within the state, including, but not limited to, bonds, grants,
36 loans, loan guarantees, enterprise zones, empowerment zones,
37 tax-increment financing, grants, fee waivers, land price
38 subsidies, matching funds, tax abatements, tax exemptions, and
39 tax credits.

1 (e) “Full-time job” means a job in which an individual is
2 employed by a recipient corporation for at least 35 hours per
3 week.

4 (f) “Granting body” means any agency, board, office, public
5 benefit corporation, or authority of the state or a local
6 government unit that provides a development subsidy.

7 (g) “Part-time job” means a job in which an individual is
8 employed by a recipient corporation for less than 35 hours per
9 week.

10 (h) “Project site” means the site of a project for which any
11 development subsidy is provided.

12 (i) “Recipient corporation” means any person, association,
13 corporation, joint venture, partnership or other entity that
14 receives a development subsidy.

15 (j) “Small business” means a corporation whose corporate
16 parent, and all subsidiaries thereof, that employed fewer than 20
17 full-time employees or had total gross receipts of less than one
18 million dollars (\$1,000,000) during the calendar year.

19 (k) “State” means an agency, board, commission, department,
20 office, or public benefit corporation of the state.

21 (l) “State or local government unit” means an agency, board,
22 commission, department, office, or public benefit corporation of
23 the state, or of a city, county, special district, or any other
24 political subdivision of the state.

25 (m) “Subsidy value” means the face value of any and all
26 development subsidies provided to a recipient corporation.

27 (n) “Temporary job” means a job in which an individual is
28 hired for a season or for a limited period of time.

29 7132. Notwithstanding Section 7550.5, the Department of
30 Finance shall submit an annual Unified Economic Development
31 Budget to the Legislature no later than October 1 of each year.
32 The report shall present all types of expenditures for economic
33 development during the prior fiscal year, including, but not
34 limited to, all of the following:

35 (a) The amount of uncollected state tax revenues resulting
36 from every corporate tax credit, abatement, exemption, and
37 reduction provided by the state or a local governmental unit
38 including, but not limited to, gross receipts, income, sales, use,
39 raw materials, excise, property, utility, and inventory taxes.

1 (b) Any tax credit, abatement, exemption, or reduction
2 received by a corporation of less than five thousand dollars
3 (\$5,000) each shall not be itemized. The Department of Finance
4 shall report an aggregate dollar amount of these expenditures and
5 the number of companies so aggregated for each tax expenditure.

6 (c) All state-appropriated expenditures for economic
7 development, including line item budgets for every state-funded
8 entity concerned with economic development, including, but not
9 limited to, the Employment Development Department, the
10 Department of Economic Opportunity, the Business,
11 Transportation and Housing Agency, the State Department of
12 Social Services, the California Workforce Investment Board, the
13 University of California, the California State University, and the
14 California Community Colleges.

15 7133. (a) Each county assessor shall annually submit a report
16 to the Department of Finance regarding any real property in the
17 county's jurisdiction that has received a property tax abatement
18 or reduction during the fiscal year. The report shall contain
19 information including, but not limited to, all of the following:

- 20 (1) The name of the property owner.
- 21 (2) The address of the property.
- 22 (3) The start and end dates of the property tax reduction or
23 abatement.
- 24 (4) The schedule of the tax reduction.
- 25 (5) Each tax abatement, reduction, and exemption for the
26 property.

27 (6) The amount of property tax revenue not paid to the county
28 as a result of the reduction or abatement.

29 (b) Each county shall also submit a report to the department
30 setting forth the total property tax revenue not paid to the county
31 during the fiscal year as a result of all property tax reductions and
32 abatements in the county's jurisdiction.

33 (c) The reports required under subdivisions (a) and (b) of this
34 section shall be prepared on two forms prepared by the
35 department, and shall be submitted to the department by the
36 county no later than three months after the end of the fiscal year.

37 (d) The department shall annually compile and publish all of
38 the data contained in the reports required under subdivisions (a)
39 and (b) in both written and electronic form, including the
40 department's Web site.

(e) If a county fails to submit its reports to the department within the prescribed time, the department shall notify the Controller, whereupon the Controller shall withhold further payments of any development subsidy to the delinquent county until the county files its reports with the department.

7134. (a) Each granting body, together with the applicant for a development subsidy, shall complete an application for the subsidy on a form prepared by the Business, Transportation and Housing Agency. The information required on the application shall include all of the following:

(1) An application tracking number for the granting agency and the project.

(2) The name, street and mailing address, and telephone number of the chief executive officer of the granting body.

(3) The name, street and mailing address, and telephone number of the chief executive officer of the applicant's corporate parent.

(4) The name, street and mailing address, and telephone number of the chief executive officer of the applicant.

(5) The street address of the project site.

(6) The three-digit North American Industry Classification System number of the project site.

(7) The total number of individuals employed by the applicant at the project site on the date of the application, broken down by full-time, part-time, and temporary positions.

(8) The total number of individuals employed in the state by the applicant's corporate parent, and all subsidiaries thereof, as of December 31 of the prior fiscal year, broken down by full-time, part-time and temporary positions.

(9) The development subsidy or subsidies being applied for with the granting body, and the value of the subsidy or subsidies.

(10) The number of new jobs to be created by the applicant at the project site, broken down by full-time, part-time, and temporary positions.

(11) The average hourly wage to be paid to all current and new employees at the project site, broken down by full-time, part-time, and temporary positions, and further broken down by wage groups as follows: six dollars (\$6) or less an hour, six dollars and one cent (\$6.01) to seven dollars (\$7) an hour, seven dollars and one cent (\$7.01) to eight dollars (\$8) an hour, eight

1 dollars and one cent (\$8.01) to nine dollars (\$9) an hour, nine
2 dollars and one cent (\$9.01) to ten dollars (\$10) an hour, ten
3 dollars and one cent (\$10.01) to eleven dollars (\$11) an hour,
4 eleven dollars and one cent (\$11.01) to twelve dollars (\$12) an
5 hour, twelve dollars and one cent (\$12.01) to thirteen dollars
6 (\$13) an hour, thirteen dollars and one cent (\$13.01) to fourteen
7 dollars (\$14) an hour, and fourteen dollars and one cent (\$14.01)
8 or more per hour.

9 (12) For project sites located in a Metropolitan Statistical
10 Area, as defined by the federal Office of Management and
11 Budget, the average hourly wage paid to nonmanagerial
12 employees in the state for the industries involved at the project,
13 as established by the United States Bureau of Labor Statistics.

14 (13) For project sites located outside of Metropolitan
15 Statistical Areas, the average weekly wage paid to nonmanagerial
16 employees in the county for industries involved at the project, as
17 established by the United States Department of Commerce.

18 (14) The type and amount of health care coverage to be
19 provided by the applicant within 90 days of commencement of
20 employment at the project site, including any costs to be paid by
21 the employees.

22 (15) A list of all development subsidies that the applicant is
23 requesting, and the name of any other granting body from which
24 those subsidies are sought.

25 (16) A statement as to whether the development subsidy may
26 reduce employment at any other site controlled by the applicant
27 or its corporate parent, within or without the state, resulting from
28 automation, merger, acquisition, corporate restructuring, or other
29 business activity.

30 (17) A certification by the chief executive officer of the
31 applicant as to the accuracy of the application.

32 (b) If the granting body shall approve the application, it shall
33 send a copy to the Business, Transportation and Housing Agency
34 within 15 days of the approval. If the application is not approved,
35 the granting body shall retain the application in its records.

36 7135. (a) Each granting body shall file an annual progress
37 report with the Business, Transportation and Housing Agency for
38 each project for which a development subsidy has been granted,
39 no later than February 1 of each year. The report shall include all
40 of the following information:

- 1 (1) The application tracking number.
- 2 (2) The name, street and mailing addresses, telephone number,
3 and chief executive officer of the granting body.
- 4 (3) The name, street and mailing addresses, telephone number,
5 and chief executive officer of the recipient corporation.
- 6 (4) A summary of the number of jobs required, created and
7 lost, broken down by full-time, part-time, and temporary
8 positions, and by wage groups.
- 9 (5) The type and amount of health care coverage provided to
10 the employees at the project site, including any costs borne by
11 the employees.
- 12 (6) The comparison of the total employment in the state by the
13 recipient's corporate parent on the date of the application and the
14 date of the report, broken down by full-time, part-time, and
15 temporary positions.
- 16 (7) A statement as to whether the use of the development
17 subsidy during the previous fiscal year has reduced employment
18 at any other site controlled by the recipient corporation or its
19 corporate parent, within or without the state as a result of
20 automation, merger, acquisition, corporate restructuring, or other
21 business activity.
- 22 (8) A signed certification by the chief executive officer of the
23 recipient corporation as to the accuracy of the progress report.
- 24 (b) On all subsequent annual progress reports, the granting
25 body shall indicate whether the recipient corporation is still in
26 compliance with its job creation, wage and benefit goals, and
27 whether the corporate parent is still in compliance with its state
28 employment requirement.
- 29 (c) The granting bodies and recipient corporations shall file
30 annual progress reports for the duration of the subsidy, or not less
31 than five years, whichever period is greater.
- 32 7136. (a) No later than 15 days after the second anniversary
33 of the date of subsidy, the granting body shall file with the
34 department a two-year progress report that includes the same
35 information as required under Section 7135. The recipient
36 corporation shall certify as to the accuracy of the information
37 contained in the report.
- 38 (b) The granting body shall state in the two-year report
39 whether the recipient corporation has achieved its job creation,

1 wage and benefit goals, and whether the corporate parent has
2 maintained 90 percent of its employment in the state.

3 (c) The department shall compile and publish all data from the
4 progress reports in both written and electronic form, including
5 the department's Web site.

6 (d) The granting body and the department shall have access at
7 all reasonable times to the project site and the records of the
8 recipient corporation in order to monitor the project and to
9 prepare progress reports.

10 (e) A recipient corporation that fails to provide the granting
11 body with the information or access required pursuant to
12 subdivisions (a) and (b) of this section shall be subject to a fine
13 of not less than five hundred dollars (\$500) per day to commence
14 within 10 working days after the February 1 deadline, and of not
15 less than one thousand dollars (\$1,000) per day to commence 20
16 days after the February 1 deadline.

17 7137. (a) A granting body shall not grant or award a
18 development subsidy if the cost per job is greater than thirty-five
19 thousand dollars (\$35,000). The cost shall be determined by
20 dividing the amount of the subsidy by the number of full-time
21 jobs required under the application approved by the granting
22 body.

23 (b) A granting body shall not grant a subsidy to an applicant
24 unless the wages paid to employees at the project site are equal to
25 or exceed 85 percent of the average wage as established pursuant
26 to paragraphs (12) and (13) of subdivision (a) of Section 7134.
27 However, for small businesses, the average wage shall equal or
28 exceed 75 percent of the wages established pursuant to these
29 provisions. The computation of wages under this subdivision
30 shall only apply to a recipient corporation that provides the
31 health care coverage as approved in its application by the
32 granting body.

33 7138. (a) A recipient corporation shall fulfill its job creation,
34 wage, health care, and other benefit requirements for the project
35 site within two years of the date it receives the subsidy. The
36 recipient shall maintain its wage and benefit goals as long as the
37 subsidy is in effect, or five years, whichever is longer.

38 (b) The corporate parent of a recipient corporation shall
39 maintain at least 90 percent of its employment in the state as long

1 as the development subsidy is in effect, or not less than five
2 years, whichever is longer.

3 (c) If the requirements under subdivisions (a) or (b) are not
4 fulfilled, the granting body shall recapture the development
5 subsidy from the recipient corporation as follows:

6 (1) Upon a failure by the recipient corporation to create the
7 required number of jobs or to pay the required wages or benefits,
8 the amount recaptured shall be based on the pro rata amount by
9 which the unfulfilled jobs, wages, or benefits bear to the total
10 amount of the development subsidy.

11 (2) Upon a failure of the corporate parent to maintain 90
12 percent of its employment in the state, the rate of recapture shall
13 equal twice the percentage by which the employment is less than
14 90 percent.

15 (d) The granting body shall provide notice to the recipient
16 corporation if its intent to recapture the development subsidy and
17 state the reasons and amount to be recaptured. The recipient
18 corporation shall remit to the governing body the amount within 60
19 calendar days of the date of the notice.

20 (e) If a recipient corporation defaults on a development
21 subsidy in three consecutive calendar years, the granting body
22 shall declare the subsidy null and void and shall so notify the
23 department and the recipient corporation. The recipient
24 corporation shall pay back to the granting body all remaining
25 value of the development subsidy it has not previously repaid
26 within 180 calendar days of the date of the notice of the default.

27 7139. (a) If a granting body fails to enforce any provision of
28 this chapter, any person who paid personal income taxes to the
29 state in the calendar year prior to the year in dispute, or any
30 organization representing those taxpayers, shall be entitled to
31 bring a civil action in state court to compel enforcement under
32 this chapter. The court shall award reasonable attorney's fees and
33 costs to the prevailing taxpayer or organization.

34 (b) All records required to be prepared or maintained under
35 this chapter, including, but not limited to, applications, progress
36 reports, recapture notices, and any other records or proceedings
37 relating thereto, shall be subject to disclosure under the
38 California Public Records Act (Chapter 3.5 commencing with
39 Section 6250).

1 (c) Nothing in this chapter shall be read to require or authorize
2 any recipient corporation to reduce wages or benefits established
3 under any collective bargaining agreement or state or federal
4 prevailing wage law.

5 (d) If any provision of this chapter is determined to be
6 unenforceable in a court of law, that determination shall not
7 affect the validity or enforceability of any other provision of this
8 chapter.

9 SEC. 2. If the Commission on State Mandates determines that
10 this act contains costs mandated by the state, reimbursement to
11 local agencies and school districts for those costs shall be made
12 pursuant to Part 7 (commencing with Section 17500) of Division
13 4 of Title 2 of the Government Code.